

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

May 10, 2022 at 2:00 p.m.

1. [19-25825-E-13](#) **JUSTIN/ELISABETH ERICKSON** **MOTION TO MODIFY PLAN**
[CK-4](#) **Catherin King** **3-25-22 [55]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2022. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") seeks confirmation of the Modified Plan to bring the delinquent payments current as they lost substantial income for a year due to COVID restrictions and their photography business. Declaration, Dckt. 58. The Modified Plan

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provides \$1,675.00 per month for 29 months and then \$1,700.00 per month for 31 months. Modified Plan, Dckt. 57. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 26, 2022. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

- A. Feasibility - Debtor is \$4,650.00 delinquent in plan payments and Debtor has failed to file current Supplemental Schedules I and J or any evidence of their current budget to support the Plan.

DEBTOR'S DECLARATION IN RESPONSE TO TRUSTEE'S OPPOSITION

Debtor filed a declaration stating they are filing supplemental schedules. Dckt. 64. Additionally, Debtor states they are current on the modified plan.

A review of the docket demonstrates Debtor has filed Amended Schedules I and J indicating a net income of \$1,754.00. Dckt. 67. Debtor appears to resolve Trustee's concerns.

At the hearing, **XXXXXXXXXX**

DISCUSSION

~~Delinquency~~

~~_____ The Chapter 13 Trustee asserts that Debtor is \$4,650.00 delinquent in plan payments, which represents multiple months of the \$1,675.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).~~

~~_____ The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that Motion to Confirm the Modified Plan is~~
XXXXXXXXXX

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2022. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is XXXXXXXXXXXXXX</p>
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The debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") seeks confirmation of the Modified Plan because of multiple factors which caused Debtor to become delinquent, and confirmation of Debtor's proposed Plan will allow Debtor to begin remitting payments. Declaration, Dckt. 83. These factors include: Debtor's car engine broke down which prevented Debtor from working; Debtor and family members were infected with COVID-19; Debtor's pet canine required an expensive medical procedure; and Debtor lost over \$200.00 a month in retirement annuity as a result of Debtor's increased life insurance. *Id.* The Modified Plan provides \$4,815.00 to be paid commencing January 25, 2022 for 51 months, and a zero (0) percent dividend to unsecured claims totaling \$382,018.34. Modified Plan, Dckt. 85. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on February 24, 2022. Dckt. 91. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's supplemental schedule J removed a \$300.00 expense for self-employment taxes but still shows the same self-employment income.
- B. Debtor does not explain why the reasons for Debtor's delinquency are not likely to reoccur when Plan payments under Debtor's proposed Plan are higher than the payments under the original Plan.

DISCUSSION

Unexplained Reduction in Expenses

The Chapter 13 Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor's supplemental Schedule J removed a \$300.00 expense for self-employment taxes that was found on the original Schedule J. Dckt. 91 at 1:24-26. Trustee notes that, however, Debtor's supplemental Schedule J still shows the same self-employment income of "INSTACART DRIVING \$2700 - \$900 EXPENSES \$1,830.00." *Id.* at 1:26-27. Debtor's present Motion does not explain this reduction in self-employment tax expenses, and neither does Debtor's Declaration in support nor Exhibit. Absent explanation from Debtor as to how Debtor is no longer paying self-employment taxes yet still expecting to receive self-employment income from the same source of work, the court is unable to discern whether Debtor's projection is in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee states that Debtor has not explained why their reasons for their delinquency in the first place was not likely to reoccur, especially considering Debtor's proposed Plan increases from \$4,450.00 in the original Plan to \$4,815.00 in the proposed Plan. Dckt. 91 at 2:2-4.

Trustee notes several concerns regarding Debtor's supplemental Schedule J:

- A. Debtor's original schedule J listed transportation expenses of \$450.00, which was clearly inadequate based on Debtor's reported costs of \$8,100.00 in total to repair their car engine and transmission. Declaration, Dckt. 83 at ¶ 2.
- B. Debtor's original schedule J listed home repair expenses as \$100, which Trustee notes was insufficient to cover Debtor's \$1,200.00 costs for unexpected home repairs. Dckt. 91 at 2:9-11. Debtor's home repair expense in their supplemental schedule J decreased home repair expenses to \$35.00, but Debtor has not provided an explanation for the reduction or why they do not anticipate other home repairs that may far surpass \$35.00.
- C. Debtor's original schedule J listed monthly pet expenses as \$150.00, which Trustee notes was insufficient to cover Debtor's \$1,000.00 medical costs for Debtor's pet. Dckt. 91 at 2:13.

- D. Debtor proposes to gross \$2,700.00 in monthly income from INSTACART DRIVING, which remains unchanged from Debtor's original Schedule J. See Dckt. 91 at 2:6. However, Debtor's supplemental schedule J indicates that Debtor continues to pay \$600.00 a month for support of an elderly mother, \$100.00 for tobacco products, and \$150.00 for pet expenses. Dckt. 86 at 7. Trustee further notes that Debtor's supplemental schedule J does not indicate whether Debtor's adult stepson, whom Debtor is also financially supporting, has an income or contributes to the household. Dckt. 91 at 2:14-15.

Based on the above, it appears that many of the estimated monthly expenses in Debtor's original schedule J were vastly below what Debtor actually incurred. Trustee's concern is that Debtor has not provided a reason for why they will be able to afford the proposed Plan payment of \$4,815.00 when Debtor continues to make the same monthly gross income, does not receive any contributions from other household members, and may continue to incur unexpected expenses that are far above what Debtor estimated on their supplemental schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, Debtor's counsel explained the steps being taken and how to properly address the Trustee's opposition. Debtor's counsel requested a continuance, which the Chapter 13 Trustee did not oppose.

Debtor's Status Report

On May 3, 2022, Debtor filed a status report indicating they are now current on plan payments and have signed up and made their April payment through TFS. Dckt. 98.

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Modified Plan is
XXXXXXXXXXXXXXXXXX

Items 3 thru 4

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2022. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is XXXXXXXXXXXXXXXX</p>
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The debtor, Aeron L. Wallace ("Debtor") seeks confirmation of the Modified Plan because his income continues to be impacted by COVID-19. Declaration, Dckt. 67. The Modified Plan provides the term will be extended from 60 months to 66 months with Plan payments averaging \$1,449.05 per month for 20 months and \$1,890.00 per month for 46 months, and a 0 percent dividend to unsecured claims totaling \$16,626.00. Modified Plan, Dckt. 69. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 4, 2022. Dckt. 76. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to use the amendment cover sheet when they filed their supplemental Schedules I & J so they are not properly authenticated. Moreover, the income on line 12 of Schedule I is \$2,652.00 and

expenses on line 22c on Schedule J are \$792. These amounts are contrary to the \$2,882.00, on the current Schedule I (Dckt. 70; P. 2, Line 12), and \$992 on the current Schedule J, (*Id.* at Line 23c).

- B. Trustee notes that the CARES Act extension has expired; however, they do not object to confirmation on these grounds and believe that cause exists to grant the relief.

DEBTOR'S REPLY

Debtor filed a Reply on April 11, 2022. Dckt. 81. Debtor replies to the Chapter 13 Trustee's Opposition as follows:

1. Debtor's Declaration filed in support of the motion declares under penalty of perjury that Schedules I and J are current. Debtor did not use the term "amended" because it suggests the original Schedules were incorrect in some way, which they were not. However, based on the Trustee's opposition, Debtor filed an Amendment Cover Sheet on April 6, 2022, Dckt. 80. Debtor further filed Amended Summary of Your Assets and Liabilities and Certain Statistical Information. Dckt. 79.

DISCUSSION

CARES Act Expiration

Trustee notes that the CARES Act under 11 U.S.C. § 1329(d) has expired. However, the Trustee does object to confirmation on these grounds based on the Plan having been filed and motion set for hearing prior to the CARES Act expiring.

The Trustee provides no legal authority or analysis for this "note" and conclusion of law by the Trustee. The enacted legislation providing for the former provisions of 11 U.S.C. § 1329(d) states:

(C) Modification of plan after confirmation.— Section 1329 of title 11, United States Code, is amended by adding at end the following:

“(d)

(1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

“(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

“(B) the modification is approved after notice and a hearing.

“(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

“(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).”.

(D) Applicability.—

(I) The amendments made by subparagraphs (A) and (B) shall apply to any case commenced before, on, or after the date of enactment of this Act.

(ii) The amendment made by subparagraph (C) shall apply to any case for which a plan has been confirmed under section 1325 of title 11, United States Code, before the date of enactment of this Act.

Coronavirus Aid, Relief, and Economic Security Act, 2020 Enacted H.R. 748, 116 Enacted H.R. 748.

This allowed for a seven year Chapter 13 Plan commenced before, on, or after the date of enactment of the CARES Act legislation. However, Congress then pared back the scope of this relief providing for a statutory sunset of this portion of the legislation, stating in the law:

(2) Sunset.—

(A) In general.—

(i) Exclusion from current monthly income.— Section 101(10A)(B)(ii) of title 11, United States Code, is amended—

(I) in subclause (III), by striking the semicolon at the end and inserting “; and”;

(II) in subclause (IV), by striking “; and” and inserting a period; and

(III) by striking subclause (V).

(ii) Confirmation of plan.— Section 1325(b)(2) of title 11, United States Code, is amended by striking “payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19),”.

(iii) Modification of plan after confirmation.— Section 1329 of title 11, United States Code, is amended by striking subsection (d).

(B) Effective date.— The amendments made by subparagraph (A) shall take effect on the date that is **1 year after the date of enactment of this Act**.

Id. (emphasis added). The effective date of the Cares Act was March 27, 2020, when it was signed into law by the President, and the 1325(d) provisions extending the term of a Chapter 13 Plan were set to expire on March 28, 2021.

The COVID-19 Bankruptcy Relief Extension Act of 2021 extended the sunset of the 11 U.S.C. § 1329(d) 72 month term for a Chapter 13 Plan until Marcy 27, 2022. COVID-19 Bankruptcy Relief Extension Act of 2021, Pub. L. No. 117-5 (Mar. 27, 2021) (H.R. 1651).

Debtor filed this Bankruptcy Case on July 13, 2020, after the CARES Act 1329(d) provisions had gone into effect. Debtor confirmed the Chapter 13 Plan in this case, which has a 60 month plan term, on September 15, 2020. Conf. Order; Dckt. 25.

On March 16, 2022, eleven days before the CARES Act extension for the 11 U.S.C. § 1329(d) 7 year plan term provision expired, Debtor filed the proposed Modified Plan extending the Plan term to 66 months. Prior to the hearing on this Motion to Confirm the Modified Plan, the law allowing for a 7 year Chapter 13 Plan term expired and is no longer the law.

In the Motion to Confirm the Modified Plan it is alleged that Debtor's business, a barbershop, was adversely effected by COVID-1.

A sunset law or sunset provision is defined as a "statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally renewed." *Black's Law Dictionary* 1574 (9th ed. 2009). The Ninth Circuit has interpreted sunset provisions to render statutes ineffective after the explicit date provided by the sunset provision. *See Bates v. Sullivan*, 894 F.2d 1059, 1071 (9th Cir. 1990) (explaining that the statute at issue includes a sunset clause which renders the statute ineffective for cases where determinations are made after the date provided by the clause).

Congress may allow such statutes to expire on the express date given by the sunset provision, opt to extend the expiration date (as in the case of Congress extending the CARES Act amendments to 11 U.S.C. § 1329 for an additional year), or amend/reenact such statutes without the sunset provision. *See e.g., Richlin Sec. Serv. Co. V. Chertoff*, 553 U.S. 571, 583 n.7 (2008) (describing how the first enacted version of an act had a sunset provision rendering it ineffective after four years, and that Congress reenacted the act without the sunset provision a year later); *Fireman's Fund Ins. Co v. City of Lodi*, 302 F.3d 928, 934 n.2 (9th Cir. 2002) (describing how an act "became inoperative" on January 1, 1999 pursuant to a sunset clause and was later reenacted on May 26, 1999 without a sunset clause). Congress has not extended the CARES Act beyond March 27, 2022.

The Trustee, nor any other party in interest provides the court any legal analysis to address the issue of whether a law that has sunset and stricken from the statute may still be "the law" to be enforced in the federal courts. The Statute and the sunset extension do not state, "and the provisions of 11 U.S.C. § 1329(d) shall sunset and not be applicable in any Chapter 13 cases (or motions to modify Chapter 13 plans) filed after such sunset." It states that the provision are struck from the federal statute.

As the United States Supreme Court has made clear to federal judges, attorneys, trustees, and others, the federal judicial process is not a "game" in which people state their beliefs and the court grants whatever they want if nobody objections. *See, United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). The Trustee's conclusion stated to the court is that so long as the CARES Act extension was in place when the proposed plan is filed, the Trustee's legal conclusion is that the plan can be confirmed with terms that have been stricken from 11 U.S.C. § 1329 by the time the confirmation hearing occurs.

A sunset law or sunset provision is defined as a “statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally renewed.” *Black’s Law Dictionary* 1574 (9th ed. 2009). The Ninth Circuit has interpreted sunset provisions to render statutes ineffective after the explicit date provided by the sunset provision. *See Bates v. Sullivan*, 894 F.2d 1059, 1071 (9th Cir. 1990) (explaining that the statute at issue includes a sunset clause which renders the statute ineffective for cases where determinations are made after the date provided by the clause).

Congress may allow such statutes to expire on the express date given by the sunset provision, opt to extend the expiration date (as in the case of Congress extending the CARES Act amendments to 11 U.S.C. § 1329 for an additional year), or amend/reenact such statutes without the sunset provision. *See e.g., Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 583 n.7 (2008) (describing how the first enacted version of an act had a sunset provision rendering it ineffective after four years, and that Congress reenacted the act without the sunset provision a year later); *Fireman’s Fund Ins. Co v. City of Lodi*, 302 F.3d 928, 934 n.2 (9th Cir. 2002) (describing how an act “became inoperative” on January 1, 1999 pursuant to a sunset clause and was later reenacted on May 26, 1999 without a sunset clause). Congress has not extended the CARES Act beyond March 27, 2022. Therefore, due to the sunset provision, 11 U.S.C. § 1329(d) is no longer effective and the maximum length of a modified plan is five (5) years, pursuant to 11 U.S.C. § 1329(c).

Continuance to May 10, 2022

At the hearing April 26, 2022 hearing, Counsel for Debtor stated that in light of the IRS claim being reduced and some other reductions, Debtor can now fund a plan that completes in sixty (60) months. A continuance was required to allow Debtor to file a supplemental pleading stating the proposed plan amendments and an opportunity for the Trustee to concur or raise any concerns to be addressed.

As of the court’s review of the Docket on the morning of May 9, 2022, a supplemental pleading stating amendments had not been filed.

At the hearing May 10, 2022 hearing, **XXXXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Aeron L. Wallace (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is
XXXXXXXXXXXX

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 1, 2022. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXXXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Aeron Lynnell Wallace ("Debtor"), is delinquent in Plan payments. Trustee shows a total of \$33,349.27 is due, so Debtor is delinquent \$4,368.28. Debtor's monthly payment is \$1,888.59, prior to the hearing another payment will come due. Thus Debtor will need to pay \$6,256.85, in order to bring this plan current by the date of the hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 15, 2022. Dckt. 63. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$4,368.28 delinquent in plan payments, which represents multiple months of the \$1,888.59 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

April 26, 2022

Motion to Confirm Modified Plan

The Motion was continued to May 10, 2022 to allow Debtor to file supplemental pleadings. Debtor appears to be actively prosecuting this case. Trustee indicated to the court on April 29, 2022 that they would not be opposed to continuing this Motion to that date.

The Motion to Dismiss is continued to May 10, 2022 at 2:00 pm in Courtroom 33 to be held in conjunction with the continued Motion to Confirm Modified Plan.

May 10, 2022 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2022. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is XXXXXXXXXXXXXXXXXX
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The debtor, Michael Roland Stanford and Carol Ann Stanford (“Debtor”), seeks confirmation of the Amended Plan. The Motion to Confirm provides that Debtor has paid a total of \$45,583.92 between June 2021 through January 31, 2022, and that Debtor promises to pay \$7,625.00 per month from February 25, 2022 through May 2026 for a total of 60 months. Dckt. 70 at ¶ 4; Amended Plan, Dckt. 73 at 8.

Debtor explains that the calculated monthly payments to secured creditors are an average of payments made over the course of sixty (60) months. *Id.* at ¶ 5. Therefore, Debtor’s payments made during the first four (4) months of the Amended Plan will be prorated and the subsequent payments in the following fifty-six (56) months will be increased proportionately. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on March 1, 2022. Dckt. 88. Trustee opposes confirmation of the Plan on the basis that:

- A. The proposed Plan is overextended as it will exceed the maximum length of sixty (60) months pursuant to 11 U.S.C. § 1322(d).
- B. It is unclear if Debtor's income stated on the Supplemental Schedule I (Dckt. 52) gives an accurate picture of Debtor's monthly income.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 89 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee references Debtor's Supplemental Schedule I filed on October 18, 2021 (Dckt. 52) and states that the Supplemental Schedule I no longer provides a Social Security Income in the amount of \$4,700.00 which had been in the Debtor's original Schedule I filed on May 25, 2021 (Dckt. 19). Opposition, Dckt. 88 at 2:4-6. The court notes that Debtor's most recent Supplemental Schedule I was actually filed on January 27, 2022, the same day Debtor filed their Motion to Confirm Second Amended Plan. See Supplemental Schedule I, Dckt. 74.

Debtor's most recent Supplemental Schedule (Docket 74) includes Debtor's Social Security income in the amount of \$5,205.90 in total. *Id.* at 4. Based on this, it appears that Debtor's Social Security income has actually increased since Debtor's previous Supplemental Schedule I filed on October 18, 2021 (Dckt. 52) which listed their Social Security income in the total amount of \$4,876.00, which was also an increase from Debtor's Social Security income of \$4,700.00 as listed in their original Schedule I filed on May 25, 2021 (Dckt. 19). On original Schedule I Debtor listed Social Security income under "Other Income," Sch. I, ¶ 8h, Dckt. 19, and not in the paragraph for Social Security Income on Schedule I (¶ 8e). Thus, Trustee's concerns over why Debtor's Social Security income has stopped or whether it was accidentally omitted are resolved, there appearing to be a clerical error in how it was listed on the various Schedules I in this case.

At the hearing, the Trustee confirmed that the income issue has been resolved by the supplemental schedules.

The court notes, however, that Debtor's proposed Plan is still noncompliant as it will exceed the maximum sixty (60) months allowed under 11 U.S.C. § 1322(d).

With respect to the Plan term, this is a problem. Counsel for the Debtor reported that to address this the plan is amended the Chapter 13 Plan to move the student loan debt to Class 4.

Debtor requested a continuance so that such amendment can be filed and documentation that moving the student loan obligations to Class 4 does not result in a financial loss to creditors with general unsecured claims. Looking at the claim and payment numbers, it appears that paying the student loan

debt through Class 4 under the contract terms results in a financial betterment for the other creditors with general unsecured claims. The Trustee did not oppose the request for a continuance.

April 4, 2022 Status Report

On April 4, 2022, Trustee filed a status report stating the “Corrected Plan” filed on March 24, 2022 is missing the signature page and nonstandard provisions.

Upon the court’s review, Debtor filed a “Corrected Second Amended Chapter 13 Plan” on March 24, 2022. Dckt. 97. Section 2.01 indicates there are additional provisions that have not been attached. Also, the signature pages have been omitted.

May 10, 2022 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Roland Stanford and Carol Ann Stanford (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is
XXXXXXXXXXXXXX

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 30, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

<p>The Objection to Confirmation of Plan is overruled.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor is unable to make Plan payments, the Plan does not comply with 11 U.S.C. § 1322, the Plan is underfunded, and the Plan exceeds the maximum term of sixty (60) months.
- B. The Plan does not provide for the cure of mortgage arrearages.
- C. Debtor failed to provide business documents.
- D. Debtor may not be able pay quarterly taxes if funds are not segregated to a tax account.

- E. Improper/overuse of C.C.P. § 704.070.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

The Plan is underfunded. Class 2 of the Plan reflects Internal Revenue Service and Franchise Tax Board claims of \$1.00 and Class 5 estimates priority debts at \$18,208.00. The Internal Revenue Service filed a Proof of Claim showing \$8,977.37 as secured and \$48,499.84 as priority. The Franchise Tax Board also filed a Proof of Claim showing \$987.22 as priority and \$633.26 as unsecured.

Debtors expensed \$2,000.00 per month as "Other Taxes" in their Schedules and Statements. However, the Internal Revenue Service filed a Proof of Claim in the amount of \$33,460.00. Claim No. 10. Trustee is concerned Debtor may not have enough funds to pay quarterly taxes without the establishment of a tax account.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Plan Term is Greater Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 78 months due to miscalculated Plan payment. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$3,255.07 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such

documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Improper use of C.C.P. § 704.070

Debtor has claimed exemptions for the full amounts in several bank accounts using exemptions C.C.P. §§ 704.070(a)(1) and (b)(2). C.C.P. § 704.070(a)(1) relates to earnings paid to an employee and C.C.P. § 704.070(b)(2) allows for exemption of only 75% of paid earnings. The Trustee's objection to these exemptions is forthcoming and the Trustee's concerns are well-taken.

At the hearing, counsel for Debtor reported that Debtor has addressed the Trustee's grounds for objecting.

Counsel for the Trustee reported that the notes of other counsel for the Trustee state that the issues have not been resolved, and a short continuance is necessary to confirm whether all issues have been resolved.

Trustee's Status Report

Trustee filed a status report on May 3, 2022 stating the objection has been resolved. Dckt. 30. Trustee states:

1. The IRS amended Claim 10.
2. Debtor has provided statements to Trustee showing Debtor is current on their mortgage.
3. Debtor has provided sufficient business documents.
4. Trustee will request a copy of tax returns to verify tax refunds.
5. Debtor has amended Schedule C.

Trustee requests the court overrule Trustee's Objection based on the amendment in the Order Confirming to provide for any net proceeds exceeding \$2,000 from Debtor's 2020 tax refund to be paid into the plan.

At the hearing, Debtor confirmed they **do/do not** agree with the amendment language.

The Modified Chapter 13 Plan, as amended, complies with the requirements of 11 U.S.C. §§ 1329, 1325, and 1322, the Motion is granted, and the Modified Plan as amended is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

~~The Objection to Confirmation filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection is overruled, James Melvin Slan and Susan Sy Yang-Slan's ("Debtor") Chapter 13 Plan filed on February 19, 2022, as amended at the hearing to provide that any annual tax refund, beginning with the 2020 tax year, in excess of \$2,000.00 is immediately upon receipt paid into the Plan by the Debtor, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

7.	<u>22-20368</u> -E-13 <u>DPC-2</u>	JAMES SLAN AND SUSAN YANG-SLAN Julius Cherry WITHDRAWN BY M.P.	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 4-4-22 <u>[21]</u>
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Final Ruling: No appearance at the May 10, 2022 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Debtor's Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2022. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is XXXXXXXXXX

Steele Lanphier, the Attorney ("Applicant") for Timothy A. West and Rosa Meria West, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period June 16, 2020, through February 11, 2022. Applicant requests fees in the amount of \$7,055.00 and costs in the amount of \$118.00.

TRUSTEE'S OPPOSITION

On March 1, 2022, David Cusick, Chapter 13 Trustee, filed an Opposition to Debtor's Attorney's Motion for Additional Attorney's Fees. Dckt. 98. Trustee states of the \$7,173.00 fees requested an additional 1.5 hours for anticipated future work related to this motion and accompanying Motion to Confirm Modified Plan (dckt. 89, p. 2, footnote 2).

Further, Trustee notes that anticipated services listed in Billing Analysis in the amount of

\$525.00 are not dated (Dckt. 91; Exhibit A, p. 4). However, referenced services performed for this motion (Dckt. 89) and the Motion to Confirm Modified Plan (Dckt.82) are both set for March 15, 2022. If the court resolves the matters and takes them off of the calendar and no hearing is held, then this amount should be adjusted to reflect that.

Additionally, the Trustee calculates that the requested fees of \$7,173.00 would take approximately 38 months to be paid in full, which would not be within the life of Debtor's 60 month plan. The Debtor is currently in month 30 of a 60 month plan.

Lastly, the Chapter 13 Plan was confirmed on April 10, 2020, and Debtor has filed a Motion to Confirm Modified Plan (Dckt. 82) set to be heard the same date as this motion. The Trustee notes that Debtor did not file a Declaration in support of this motion.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—

- (I) reasonably likely to benefit the debtor's estate;
- (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's for the Estate include communicated with client and creditor's counsel, prepared and filed substantive motions, and appear at court hearings. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request

additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 18. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion for Relief from Stay: Applicant spent 2.2 hours and Paralegal spent 3.0 hours in this category. Applicant communicated with client, prepared and filed an opposition, communicated with bank counsel on MFR, and appeared at the hearing.

Motion to Confirm Second Modified Plan: Applicant spent 4.6 hours and Paralegal spent 4.7 hours in this category. Applicant communicated with client, draft a new plan, file motion to confirm modified plan, appear at motion to dismiss hearing, and reviewed order for motion to dismiss.

Motion to Confirm Third Modified Plan: Applicant spent 4.6 hours and Paralegal spent 4.0 hours in this category. Applicant communicated and met with client, prepared and filed motion.

Motion for Fees: Applicant spent 1.9 hours and Paralegal spent 3.8 hours in this category. Applicant prepared and filed the motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steele Lanphier, Attorney	13.4	\$350.00	\$4,690.00
Paralegal	15.5	\$150.00	\$2,325.00
Total Fees for Period of Application			\$7,015.00

The court notes that there were typographical errors in Applicant's Motion, but upon reviewing the supporting pleadings, those errors were reconciled.

Additionally, the total additional compensation sought in the motion is \$7,173.00. This number is based upon attorney's fees, paralegal fees, and costs. The actual amount of fees would be the total compensation sought less than costs, bringing the total amount of fees to \$7,055.00 (\$7,173.00 - \$118.00). However, upon review the actual total compensation sought is \$7,133.00 (\$4,690.00 + \$2,325.00 + \$118.00 = \$7,133.00). Which means the total amount of fees is actually \$7,015.00 (\$7,133.00 - \$118.00).

Applicant relies on the court to do associate level work and sift through seven (7) pages of exhibits. The court had to examine each page of the exhibits to decipher the actual fees incurred.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$118.00 pursuant to this application. However, applicant fails to provide a comprehensive breakdown of expenses in their Motion and supporting documents. Applicant relies on the court to do associate level work and sift through seven (7) pages of exhibits. The court had to examine each page of the exhibits to decipher the actual expenses incurred and the category the expenses fit into.

April 12, 2022 Hearing

Applicant did not appear at the April 12, 2022 continued hearing. There remains the open

question of how Debtor will pay these fees. If approved by the court, the Chapter 13 Plan confirmed would then be rendered underfunded and in default, resulting in Debtor obtaining no value for these legal services.

The court continues the hearing one final time for Applicant, Debtor, and Debtor's new counsel to address this point and "green light" the granting of this Application.

May 10, 2022 Hearing

At the hearing, XXXXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Steele Lanphier ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Allowance of Professional Fees is
XXXXXXXXXXXXXXXXXX

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Creditor on March 28, 2022. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is XXXXXXXXXXXXXXXXXX

The Motion filed by Lorrie Lane Blevins (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 16. Debtor describes the following property being encumbered by the IRS lien for the (\$113,602) tax debt:

- A. Interests in Real Property. Debtor leases real property commonly known as Lot 24 42 Milestone El Dorado National Forest, with a Cabin thereon, from the National Forest Service, (the “Real Property”) which lease Debtor states has a value of \$25,000.00.
- B. Personal Property:
 - 1. Cash on hand.....\$100.00
 - 2. Golden One Checking Account.....\$ 957.00

3.	Household Goods and Furnishings.....	\$1,500.00
4.	Electronics.....	\$ 100.00
5.	Clothes & Shoes.....	\$ 50.00
6.	Jewelry.....	\$ 10.00
7.	2 dogs.....	\$ 1.00
8.	American General Annuity.....	\$ 1.00, and
9.	2011 Chevrolet Silverado Pickup.....	\$5,500.00

the IRS collateral (the “Personal Property”). Debtor testifies that the Personal Property is encumbered by senior liens totaling (\$3,700), which leaves a value of \$7,510.00 in the Personal Property for the IRS secured claim. There are no liens encumbering Debtor’s interests in the Real Property

Debtor seeks to value the Real Property and Personal Property at a replacement value of \$11,219.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Based on these calculations of value and senior liens, Debtor values the IRS secured claim to be \$32,519.00.

Information Under Penalty of Perjury on Debtor’s Schedules

In her Declaration, Debtor testifies under penalty of perjury that the Personal Property (not identifying which) is encumbered by a (\$3,700.00) debt secured by a senior lien. However, Debtor does not identify the creditor having such a lien. Declaration, ¶ 6; Dckt. 16.

On Schedule D, Debtor states under penalty of having only one creditor with a secured claim, that being Flagship Credit Acceptance, with a claim of (\$3,700.00) which is secured by the vehicle.

On Schedule D the Debtor lists the IRS as having a secured claim, but neglected to identify that the federal tax lien encumbers Debtor’s real property, identifying only the interest in the real property.

No Proofs of Claim Filed

Neither the IRS nor Flagship Credit Acceptance have filed proofs of claim in this case as of this time. This bankruptcy case was filed on March 22, 2022, so the failure to have filed proofs of claim in the past twenty-one (21) days is not surprising.

Continuance of Hearing

At this early, early stage of the bankruptcy case, the court has no evidence of the two secured claims, other than the Schedules and Debtor’s declaration. With no proofs of claim filed, there cannot be disbursements on secured claims.

The court notes that in Debtor’s prior bankruptcy case, 21-21639, filed on May 1, 2021 and dismissed on March 10, 2022, Flagship Credit Acceptance filed Proof of Claim 7-1 for a secured claim

of (\$4,352.56) and the IRS filed Proof of Claim 13-2 for a secured claim of (\$113,604.00) priority claim of (\$2,500), and general unsecured claim of (\$54,663.35).

Given no claim having been filed in this case, valuing it premature.

May 10, 2022 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Lorrie Lane Blevins (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value the Secured Claim of the Internal Revenue Service is **XXXXXXXXXXXXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2022. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Opposition was filed.

The Motion to Impose the Automatic Stay is XXXXXXXXXXXXXXXXXX

Lee Ann Newton (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 2020-20745 and 2021-22307) were dismissed on May 19, 2021, and January 5, 2022, respectively. *See* Order, Bankr. E.D. Cal. No. 20-20745-E-31, Dckt. 82, May 20, 2021; Order, Bankr. E.D. Cal. No. 21-22307-E-13, Dckt. 62, January 10, 2022. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed due to delinquency in plan payments.

CREDITOR’S OPPOSITION

Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust (“Creditor”) filed its opposition to Debtor’s Motion to Impose Automatic Stay on March 28, 2022. Opposition, Dckt. 19. Creditor states Debtor does not have sufficient income to sustain a Chapter 13 plan *Id.* at ¶ 8. Creditor points to Debtor’s low income and the fact that she is only paid for nine (9) months of the year due to the nature of her work. *Id.* at ¶ 9. Creditor also alleges that the Debtor’s Chapter 13 Plan falls short of payment in full of Secured Claim of Creditor as it claims only \$30,229.44 in pre-petition arrears when it is actually \$35,734.54. *Id.* Creditor is also states it is unclear whether Debtor can fund a “feasible plan” even with her brother’s contribution income. *Id.* Creditor notes that the present case is now Debtor’s fifth bankruptcy case since June 15, 2018. *Id.*

Creditor references Debtor’s Declaration and states that it is “sparse on details” as it does not demonstrate Debtor’s ability to fund a Chapter 13 plan and it does not indicate Debtor has an understanding of other options to save her home or her equity. *Id.* at ¶ 10. Thus, Creditor opposes Debtor’s present Motion unless Debtor provides evidence of her “ability to confirm a feasible Plan” and her “ability to maintain ongoing Plan payments as necessary.” *Id.* at ¶ 12.

DEBTOR’S RESPONSE

On April 5, 2022, Debtor filed a response to Creditor’s opposition stating they intend to amend their plan to reflect the approximately \$5,000.00 more in arrears than is estimated on Debtor’s schedules. Dckt. 22. Additionally, Debtor states they are committed to making the required plan payments and the prior filings should not be held against them

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a

case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

DISCUSSION

Debtor's prior cases were dismissed after Debtor became delinquent in her plan payments. For her first case, Debtor explains that she works in a school district and received reduced income when the school shut down during the COVID-19 pandemic. Declaration in support, Dckt. 13 at ¶ 4. (No. 2020-20745).

In her second case, Debtor had additional income from her brother as well as a Chapter 13 Plan which provided for lower plan payments over the summer months when Debtor would not receive employment income. Decl. at ¶ 6. However, Debtor inadvertently fell behind in her plan payment because she does not get paid until the end of the month after plan payments come due. *Id.* at ¶ 7. Debtor states that she tried her best to catch up on her plan payments but was unable to completely catch up by the time of the hearing on the Chapter 13's motion to dismiss. *Id.* at ¶ 8-9. (No. 2021-22307).

DEBTOR'S PRIOR BANKRUPTCY CASES

In reviewing the court's file, the court notes that the two prior bankruptcy cases pending and dismissed in the past year are not Debtor's only recent bankruptcy cases. Since June 2018, Debtor has filed, and had dismissed, the following cases:

1. Case No. 18-23750 – Chapter 13
Represented by Other Counsel
Date Filed: June 15, 2018
Date Dismissed: May 31, 2019

Plan Payment Amount: \$2,724.30

Total Amount Paid by Debtor: \$9,989.56 (Trustee Final Report, 18-23750,

Average Payment For Months of Case: $\$9,989.56/12 \text{ months} = \832.46

Reason for Dismissal: Delinquent in plan payments and failure to propose a new Amended Plan.

2. Case No. 2019-24419 – Chapter 13
Represented by Other Counsel
Date Filed: July 15, 2019
Date Dismissed: January 16, 2020

Plan Payment Amount: \$2,185.00

Total Amount Paid by Debtor: \$5,060.46, with an additional \$941.54 refunded to Debtor. (Trustee Final Report, 19-24419, Dckt. 53)

Average Payment For Months of Case: $\$9,989.56/5 \text{ months} = \$1,012.11$

Reason for Dismissal: Delinquent in plan payments

3. Case No. 2020-20745 – Chapter 13
Represented by Same Counsel as Current Case
Date Filed: February 10, 2020
Chapter: 13
Date Dismissed: May 20, 2021

Plan Payment Amount: \$2,491.76

Total Amount Paid by Debtor: \$27,755.07, with an additional \$3,916.93 refunded to Debtor. (Trustee Final Report, 20-24419, Dckt. 85)

Average Payment For Months of Case: $\$27,755.07/14 \text{ months} = \$1,982.50$

Reason for Dismissal: Delinquent in plan payments

4. Case No. 2021-22307 – Chapter 13
Represented by Same Counsel as in Current Case
Date Filed: June 22, 2021
Date Dismissed: January 10, 2022
Plan Payment Amount: \$2,700.00

Total Amount Paid by Debtor: \$8,600.00 (Trustee Final Report, 20-24419, Dckt. 65.)

Average Payment For Months of Case: $\$8,600.00/7 \text{ months} = \$1,228.57$

Reason for Dismissal: Delinquent in plan payments and failure to propose a new Amended Plan.

Creditor is correct in that the present case marking Debtor's fifth attempt at a Chapter 13 bankruptcy case is relevant. Debtor seems to have a pattern of filing new bankruptcy cases about 1-2 months after the dismissal of her prior case, as well as a pattern of delinquency in plan payments. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was

intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights.” *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011).

The Plan filed in this current case requires monthly plan payments by Debtor consisting of:

1. \$2,300.00 per month for two months;
2. \$ 100.00 per month for three months;
3. \$2,300.00 per month for nine months;
4. \$ 100.00 per month for three months;
5. \$2,300.00 per month for nine months;
6. \$ 100.00 per month for three months;
7. \$2,300.00 per month for nine months;
8. \$ 100.00 per month for three months;
9. \$2,900.00 per month for nine months;
10. \$ 100.00 per month for three months; and
11. \$2,900.00 per month for three months.

Plan, ¶ 2.01 and § 7 Additional Provisions; Dckt. 17. The Plan term is stated to be 56 months. *Id.*, ¶ 2.03.

Looking at the Claim filed in 18-23750, Proof of Claim 2-1 stating a pre-petition arrearage of (\$18,678.08) and Proof of Claim 8-1 in case 21-22307 showing a pre-petition arrearage of (\$30,229.44), Debtor's reorganization efforts resulted in the arrearage hole getting deeper. In opposing the present Motion, Creditor asserts that the pre-petition arrearage has increased to (\$35,734.42), which would be an almost 100% increase since Debtor began filing Chapter 13 cases in 2018.

On Schedule I in this case Debtor states having monthly gross wages of \$2,752.10. Dckt. 16 at 23. Debtor also lists having \$1,400 in rental income and a \$500 a month contribution from her daughter. *Id.* Debtor has not included the required statement of gross monthly income and expenses in computing net monthly rent income of \$1,400. On the Statement of Financial Affairs Debtor states having gross rental income of \$32,000 in 2021. *Id.* at 29. Dividing \$32,000 by 12 months yields \$2,666.66 a month in gross rental income. With Debtor reporting \$1,400 in net monthly income, Debtor is spending \$1,266.66 a month on rental expenses.

Debtor states having monthly expenses of (\$1,742) on Schedule J. *Id.* at 26. This does not include any mortgage payments, property taxes, property insurance, or property maintenance. *Id.* at 25.

Debtor's proposed plan provides for making a monthly plan payment of (\$1,302.19) for the current post-petition mortgage payment. Plan, ¶ 3.07; Dckt. 17. Though listing a (\$30,229.44) pre-petition arrearage, with Creditor asserting it is (\$35,734.42) in the Opposition, no amount to pay this arrearage is provided for in the Plan. *Id.*, ¶ 3.07(c).

No other claims are provided for in the Plan, and Debtor's counsel is to be paid \$4,500.00 through the Plan, in addition to the Chapter 13 Trustee fees of 10%.

Computing the required Plan payments and the funding, the proposed Chapter 13 Plan appears to be significantly underfunded.

Months of the Plan		Number of Months Paid	Total Paid for Period
1-2	\$2,300.00	2	\$4,600.00
3-5	\$100.00	3	\$300.00
6-14	\$2,300.00	9	\$20,700.00
15-17	\$100.00	3	\$300.00
18-26	\$2,300.00	9	\$20,700.00
27-29	\$100.00	3	\$300.00
30-38	\$2,300.00	9	\$20,700.00
39-41	\$100.00	3	\$300.00
42-50	\$2,900.00	9	\$26,100.00
51-53	\$100.00	3	\$300.00
54-56	\$2,900.00	3	\$8,700.00
			=====
	Total Plan Payments		\$103,000.00

Disbursements Required Under the Plan			
Chapter 13 Trustee Fees 10%			(\$10,300.00)
Debtor Attorneys' Fees			(\$4,500.00)
Current Mortgage Payments			(\$72,922.64)
	[\$1,302.19 x 56 months]		
Pre-Petition Arrearage Cure			(\$35,734.42)
	[(\$35,734.42)]		
			=====
	Total Required Plan Payments		(\$123,457.06)

Over/(Under) Funding of Plan	(\$20,457.06)
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In her Declaration, Debtor states that in the prior case the defaults and inability to cure arose because Debtor is paid at the end of the month. It is unclear as to why or how the timing of Debtor's income and the funding of a plan was a "surprise" in the prior fourth Chapter 13 case filed by Debtor.

While Debtor may be desperate to save the residence, which by Debtor's computation has \$304,000 of equity, from the information provided, it appears that Debtor would be facing another plan funding failure.

Accordingly, Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

Continuance of Hearing

While the Debtor has, with the assistance of counsel, demonstrated over the years an inability to prosecute a Plan, Debtor does have a very valuable asset which she could well lose if she continues down her historic path.

Though there is no stay currently in place, Creditor confirmed at the hearing that Creditor would not be moving forward with a sale while this Motion is pending.

The court continued the hearing a month to afford Debtor and Debtor's counsel to have an "economically real" discussion, and then address with Creditor and Creditor's counsel how Debtor would prosecute this case in a manner consistent with the Bankruptcy Code and a with a Chapter 13 Plan Debtor can actually perform. This may well be a Plan providing for the orderly sale of the Property (before interest rates increase substantially more than they already are) and Debtor salvaging her substantial exempt equity in the Property.

To demonstrate Debtor's good faith, Debtor shall make the plan payments required under the proposed Plan and the Chapter 13 Trustee shall make a disbursement of the amount provided for Creditor's Class 1 Claim for April 2022 as an Adequate Protection Payment.

May 10, 2022 Hearing

On May 2, 2022, the Chapter 13 Trustee filed a Motion to Dismiss this Bankruptcy Case. Dckt. 30. The grounds stated in the Motion to Dismiss include that Debtor has made \$0.00 plan payments to the Trustee, is as of the filing of the Motion to Dismiss \$2,300.00 delinquent in plan payments, and the next \$2,300.00 monthly plan payment is due on May 25, 2022.

Additionally, due to the failure to make the plan payment, Debtor has not made the required adequate protection payment to Creditor.

As noted above, the Debtor may have more than \$300,000 of exempt equity in the property. As of the court's May 9, 2022 review of the Docket, no further pleadings were filed. It may be that Debtor and Debtor's counsel have been working diligently to resolve this matter, either with Creditor, alternative funding, or other resolution so as to not lose \$300,000+ in exempt equity. Or, it may be that Debtor is so fixated on keeping this property at "all costs," the cost will be the loss of \$300,000+ in exempt equity.

On Schedule A/B Debtor states living in this property over 30 years, having purchased it in 1988. On Schedule J Debtor lists having no dependants. Dckt. 16 at 25. For expenses on Schedule J, Debtor lists having (\$1,742.99) a month, which do not include the mortgage payment, property taxes, insurance, and repair and maintenance of the Property. Even with property taxes and insurance, Debtor will have necessary expenses for the repair and maintenance of the Property over the five years of the Plan.

Some of Debtor's other expenses listed on Schedule J appear questionable. Food and housekeeping supplies are listed at \$500.00 a month. Allowing \$50 for housekeeping supplies, that leaves \$450 a month for food. In a 30 day month, that equals \$5.00 a meal, which is a questionable amount given the substantial increase in food prices in 2022 and projected going forward.

Debtor lists no expenses for personal care products and services, or for out of pocket/deductibles for medical and dental expenses.

Debtor lists owing a 2015 Ford Focus SE on Schedule A/B. Dckt. 16. On Schedule J Debtor' lists a monthly expense of \$215.00 a month for fuel, registration, and maintenance of this ten

model year old vehicle. Setting aside \$50 a month for maintenance and \$15 for registration, that leaves \$150 a month for fuel. At \$5.35 a gallon, that allows for purchasing 28 gallons of gas a month. If Debtor averages 27 miles to the gallon, that allows Debtor to drive 756 miles a month, which averages 185 miles a week, which averages 26 miles a day. This expense appears to be low.

At the hearing, XXXXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Impose the Automatic Stay filed by Lee Ann Newton (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Impose the Automatic Stay is
XXXXXXXXXXXXXX

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2022. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Shirlean Sparkle Moore-Jordan ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

TRUSTEE'S RESPONSE

On April 26, 2022, Trustee filed a response stating the April 25, 2022 payment has yet to be made. Dckt. 43. Trustee states they do not oppose the plan if payments are brought current.

At the hearing, ~~XXXXXXXXXX~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Shirlean Sparkle Moore-Jordan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 4, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.~~

FINAL RULINGS

12. [19-26898-E-13](#) TARA NAISBITT MOTION TO MODIFY PLAN
[CYB-3](#) Candance Brooks 3-25-22 [\[60\]](#)

Final Ruling: No appearance at the May 10, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2022. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Tara L. Naisbitt ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

TRUSTEE'S RESPONSE

Trustee filed a response on April 26, 2022 recommending approval of the modified plan. Dckt. 67.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Tara L. Naisbitt (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on March 25, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the May 10, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion for Allowance of Professional Fees is granted.</p>

Chad M Johnson, the Attorney ("Applicant") for Kristen Michelle Larsen, the Chapter 13 Debtor ("Client"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 16, 2021 to March 31, 2022. Applicant requests fees in the amount of \$2,957.50 and costs in the amount of \$63.27.

TRUSTEE'S NONOPPOSITION

Trustee filed a nonopposition on April 13, 2022. Dckt. 52. Trustee does not oppose the additional attorney's fees and finds the services were needed and the fees are reasonable.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include case administration, prosecuting a motion to modify, and this fee motion. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 2.40 hours in this category. Services included general correspondence with Debtor.

Motion to Modify: Applicant spent 9.3 hours in this category. Services included preparing and filing a new confirmable plan and communicating with creditors on the confirmability of the plan.

Fees Breakdown: Applicant spent 0.80 hours in this category. Services included preparing and filing this new motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad M. Johnson, Attorney	3	\$400.00	\$1,200.00
Tina Perez, Paralegal	9.50	\$185.00	<u>\$1,757.50</u>
Total Fees for Period of Application			\$2,957.50

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C.

§ 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees
First Interim	\$3,327.00
Second Interim	\$2,957.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$6,284.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$63.27 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$27.36.

The costs requested in this Application are,

Description of Cost	Cost
Printing & Envelopes	\$24.05
Postage	\$39.22
Total Costs Requested in Application	\$63.27

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$2,957.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Second Interim Costs in the amount of \$63.27 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs

allowed by the court.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,957.50
Costs and Expenses	\$63.27

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

Chad M Johnson, the Attorney (“Applicant”) for Kristen Michelle Larsen, the Chapter 13 Debtor (“Client”), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

The Motion for Allowance of Fees and Expenses filed by Chad M Johnson (“Applicant”), Attorney for Kristen Michelle Larsen, Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$2,957.50
Expenses in the amount of \$63.27,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the May 10, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 1, 2022. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Kelstin Group, Inc., dba Pacific Credit Services ("Creditor") against property of the debtor, Dennis A. Frazier ("Debtor") commonly known as 2 Odom Court, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,130.16. Exhibit A, Dckt. 72. An abstract of judgment was recorded with Sacramento County on June 4, 2019, that encumbers the Property. *Id.*

Trustee's Response

Trustee filed a response stating they do not oppose Debtor's motion. Dckt. 81.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$335,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$134,559.05 as

of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$455,000.00 on Schedule C. Dckt. 1.

There appears to be numerous contradicting pieces of information provided in Debtor's Schedules, Proof of Claims, and the current Motion:

Schedules

Schedule A - Debtor claims the value of the property is \$335,000.00.

Schedule D - Debtor states there are two secured claims with Freedom Mortgage Corporation. The property described that secures these claims are "Real Estate Mortgage." The court presumes the Property secures these claims, however, it is not clearly laid out in the Schedules.

Schedule D - Debtor states the value of the collateral is \$0.00. If the collateral is the Property, the value is different than described in Debtor's Schedules A/B.

Proof of Claims

Proof of Claim 2-1, First Trust has a secured claim in the amount of \$75,000.00.

Proof of Claim 4-1, Freedom Mortgage Corporation has a secured claim in the amount \$126,942.93.

Therefore, it appears the total consensual liens total \$201,942.93, not \$126,942.93, as described in the Motion.

Even with these discrepancies, after applying the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Dennis A. Frazier ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the judgment lien of Kelstin Group, Inc., dba Pacific Credit Services, California Superior Court for Sacramento County Case No. 18-00247216, recorded on June 4, 2019, Document No. 201906041485, with the Sacramento County Recorder, against the real property commonly known as 2 Odom Ct, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15. [21-23160](#)-E-13 **REGINALD/NICHELE NICHOLS** **MOTION TO MODIFY PLAN**
[TLA-4](#) **Thomas Amberg** **3-11-22 [63]**

Final Ruling: No appearance at the May 10, 2022 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2022. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Reginald Keith Nichols and Nichelle Leigh Nichols (“Debtor”), has filed evidence in support of confirmation. No

opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

TRUSTEE'S RESPONSE

Trustee filed a response on April 26, 2022 stating the April 25, 2022 payment had not yet been received. Dckt. 72. Trustee states so long as the payment gets paid, Trustee does not oppose this Motion.

On May 6, 2022, the Chapter 13 Trustee filed a Status Report confirming that the April 2022 payment was received, and the Trustee does not oppose confirmation.

The proposed Modified Chapter 13 Plan complies with the requirements of 11 U.S.C. § 1329, 1325, and 1322; the Motion is granted; and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Reginald Keith Nichols and Nichelle Leigh Nichols ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 11, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the May 10, 2022 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 15, 2022. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The court having entered an Order overruling the Objection (Dckt. 20) and an order confirming the Corrected Chapter 13 Plan (Order, Dckt. 22);

The hearing on the Objection to Confirmation of Plan is removed from the Calendar.